



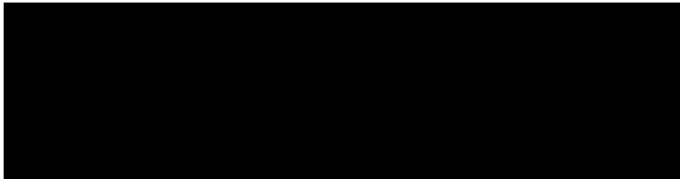
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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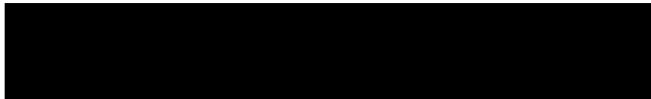
File: SRC-99-050-50029

Office: Texas Service Center

Date: 22 JAN 2002

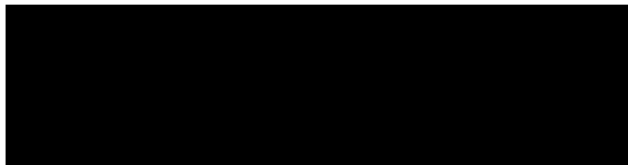
IN RE: Petitioner:

Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a company providing software development and consulting services with eighty five employees and a stated gross annual income of \$19 million. It seeks to employ the beneficiary as a senior programmer/analyst for a period of two years and six months. The director determined the petitioner had submitted conflicting evidence relating to the location the beneficiary would work and had not established that the beneficiary qualifies to perform the duties of the proffered position.

On appeal, counsel submits a statement. Counsel also indicates that a brief and/or additional evidence would be submitted in support of the appeal on or before July 17, 1999. However, as of the date of this decision, no additional material has been submitted to supplement the appeal. Therefore, the record must be considered complete.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the beneficiary's degree is in metallurgical engineering rather than computers. The director further noted that the petitioner had submitted conflicting evidence relating to the location the beneficiary would work. On appeal, counsel asserts that an individual with a degree in engineering in virtually any scientific field requires the attainment of proficiency in many areas of computer science. Counsel contends that the beneficiary is qualified to perform the duties of the proffered position because he possesses the

equivalent of U.S. bachelor's degree in computer science when his degree in metallurgical engineering is viewed in conjunction with his work experience.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary had passed the "Final Degree Examination" in metallurgical engineering at the University of Sambalpur in India in May 1988. The petitioner has provided an evaluation of the beneficiary's education by an evaluation service. The evaluation states that the beneficiary's foreign education is equivalent to a Bachelor of Science degree in metallurgical engineering from an accredited university in the United States. However, a review of the transcripts contained in the record reveals that the beneficiary completed only two computer related courses during his academic program. Furthermore, these two courses do not comprise even one full semester of study, as these were only two of the four courses taken by the beneficiary in his final semester of study in attaining the degree noted above.

The argument by counsel that an individual with a degree in engineering in virtually any scientific field requires the attainment of proficiency in many areas of computer science cannot be accepted. Counsel has failed to submit any documentary evidence which would tend to support this assertion. Furthermore, a review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 111-112, finds that the usual requirement

for employment in the proffered position is a baccalaureate degree in computer science, information science, or management information systems.

Counsel contends that the beneficiary possesses the equivalent of a U.S. bachelor's degree in computer science when his degree in metallurgical engineering is viewed in conjunction with his work experience. However, the petitioner has failed to submit any evidence such as affidavits or letters of employment to support the beneficiary's prior employment history as listed in the initial Form I-129 petition. Therefore, it cannot be concluded that the petitioner has established that the beneficiary is qualified to work as a senior programmer analyst based upon his education and purported work experience.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

It is noted that the director also concluded that the petition could not be approved because the petitioner had submitted conflicting evidence relating to the location the beneficiary would work. Upon review, it appears that the petitioner has provided a reasonable explanation to resolve any perceived conflicts in the evidence contained in the record. However, as the petition may not be approved for the reasons cited above, this issue need not be discussed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.